but he pleaded them "as a partial defense." The plaintiff demurred. From an order sustaining the demurrer the defendant appealed. *Held,* that facts constituting a complete defense are not bad on demurrer because pleaded "as a partial defense." *H. G. Vogel Co.* v. *Wolff,* 141 N. Y. Supp. 756.

It is the general rule that a plea or answer purporting to be a defense to the whole cause of action, but which answers only a part, is bad on demurrer. *State Treasurer* v. *Holmes,* 4 Vt. 110; *Webb* v. *Nickerson,* 4 Pac. 1126; *Loder* v. *Phelps,* 13 Wend. 46; *Shortle* v. *Terre Haute & I. R. Co.,* 131 Ind. 338; *Illinois Central R. Co.* v. *Ludig,* 64 Ill. 151. Whether the converse of the above general rule is true is a disputed question, and one on which very few cases have been decided. Indiana and Maryland have held that a plea entitled "as a partial defense," though in itself a complete defense to the cause of action alleged, is bad on general demurrer. *Davis* v. *Bush,* 4 Blackf. (Ind.) 330; *Cram* v. *Yates,* 2 Har. & G. 332. On principle the case is properly decided. For if facts alleged are sufficient to constitute a complete defense, they must necessarily constitute a partial defense. The whole is greater than any of its parts. A liberal construction of pleadings demands that substance should not be sacrificed to form.

PLEADING—DEMURRER.—Plaintiff and defendant entered into a contract in regard to the purchase of tax-titles to certain property of a corporation in which the plaintiff was a stockholder. In his complaint, the plaintiff alleged the performance of all agreements on his part to be performed, and asked specific performance on the part of the defendant. The defendant demurred on the ground that the contract pleaded in the complaint was illegal and void, contrary to public policy and good morals, and could not be enforced. *Held,* that the demurrer was properly overruled, for the reason that it was unauthorized by any of the grounds of demurrer prescribed by the code. *Meyer* v. *Wright,* (Colo. App. 1913) 131 Pac. 787.

One of the grounds of demurrer specified in the code is, "that the complaint does not state facts sufficient to constitute a cause of action." Without using the exact language of the code, the demurrer pointed out specifically wherein the complaint was insufficient. Many courts hold with the above decision that the demurrer must be taken in the exact language of the statute, and that a substantial compliance therewith is not sufficient. *Mayberry* v. *Kelly,* 1 Kan. 116; *Harper* v. *Chamberlain,* 11 Abb. Prac. 234. To use the language of *Hanson* v. *Neal,* 215 Mo. 256: "In technical pleading technicalities count. It is well to keep within the statutory way as a beaten path." Other courts hold that a demurrer, though not in the precise language of the statute, is sufficient if it sets out substantially one of the statutory causes for demurrer. *Busher* v. *Knapp, Adm'r.,* 107 Ind. 340; *Lagow et al.* v. *Neilson,* 10 Ind. 183; *Hanna* v. *Hawes,* 45 Iowa 437. But even in the latter courts, if facts are not stated in the demurrer, it must conform to the provisions of the statute in terms. *Lane* v. *State,* 7 Ind. 426. In those cases where facts set up in the demurrer in disregard of the statutory form have been allowed, the demurrer has been held to be more specific, and "would not cover any objection other than that specifically pointed out, although

there be other necessary facts not stated, that would have been reached had the language of the statute been employed." *Robinson* v. *Leach,* 10 Ind. 308.

PUBLIC OFFICERS—SECRET PROFITS.—In an action against a city officer, who, while acting in an advisory capacity to a committee of the council charged with the selection of a site for a building to be used in connection with his department, purchased land with a view to selling it to the city, and conveyed it to a third person who, pursuant to the plan, sold it to the city at an advanced price, the court held that the officer became a trustee for, and liable to the city to the extent of the difference between the price paid by him and that paid by the city. *City of Minneapolis* v. *Canterbury,* (Minn. 1913), 142 N. W. 812.

This case applies to a public officer the doctrine of constructive trusts which is frequently applied in the case of those standing in the private fiduciary relation of principal and agent. *Gardner* v. *Ogden,* 22 N. Y. 327; *Greenfield Savings Bank* v. *Simons,* 133 Mass. 415; *Bunker* v. *Miles,* 30 Me. 431. The leading case directly in point is one that arose in the Canadian Chancery Courts. The mayor of a city having contracted to purchase at a large discount, certain debentures which the city contemplated issuing, was compelled to account for the profits which he realized from the transaction. *Toronto* v. *Bowes,* 6 Grant 1. While this doctrine has not been very frequently invoked in this particular class of cases, yet it affords a very convenient remedy for the recovery of illegal profits where, as in the principal case, the contract is wholly executed on both sides, inasmuch as in such cases, according to the weight of authority, the city cannot rescind the transaction and recover the whole purchase price unless it is willing and able to place the other party in statu quo. He is entitled to the reasonable value of the thing contracted for, which in such cases is the purchase price less the profits. *Frick* v. *Brinkley,* 61 Ark. 397; *Macon* v. *Huff,* 60 Ga. 221; *Grand Island Gas Co.* v. *West,* 28 Nebr. 852; *Thomas* v. *Brownsville,* 109 U. S. 522. Other courts hold that such contracts are absolutely void, and that no recovery can be had on a quantum meruit. *Berka* v. *Woodward,* 125 Cal. 119, 73 Am. St. Rep. 31, and cases cited in the note.

SALES—NO IMPLIED WARRANTY OF FITNESS FOR PURPOSE INTENDED—Plaintiff sold defendant an engine of stated horse-power, the written contract containing an express warranty that it would develop such horse-power and further stipulations as to terms of payment and repairs. Plaintiff's agent had visited defendant's mill before the sale, examined the machinery, and therefore knew the use to which the engine was to be applied. Plaintiff sues on a note executed for balance of the price, and defendant, contending that there was an implied warranty that engine would run his mill, asks for damages. *Held,* there was no such implied warranty. *Middletown Mach. Co.* v. *Chaffin* (Ark. 1913), 157 S. W. 398.

It is well settled that, upon the present and executed sale of a definite ascertained and existing chattel, which is open to the buyer, and of which the seller is neither manufacturer nor grower, no warranty whatever as to quality or fitness is implied: *Parkinson* v. *Lee,* 2 East. 314; 2 BLACK, COMM.